

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1099 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

ANIL ALIAS ABDUL JAYKISHANDAS MISTRI

Versus

COMMISSIONER OF POLICE

Appearance:

MR PRAVIN GONDALIYA for Petitioner

Mr. D.P. Joshi, A.P.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 01/11/1999

ORAL JUDGEMENT

Heard learned Advocate Mr. Pravin Gondaliya and learned A.G.P. Mr. D.P. Joshi for the respondents nos.1, 2 and 3.

The detention order dated 10-1-1999 passed by the respondent no.1-Commissioner of Police, Rajkot City against the petitioner in exercise of powers conferred

under Section 3(1) of the Gujarat Antisocial Activities Act, 1985 ("PASA" for short) is challenged in the present petition under Article 226 of the Constitution.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced at Annexure "B" inter alia indicate that two criminal cases vide CR no.473/98 and CR no.790/98 dated 24-12-1998 have been registered against the petitioner at Malavianagar Police Station and Taluka Police Station, Rajkot for the offences made punishable under Secs.406, 420, 467, 468, 471, 472, 473, 474, 489, a, b c read with Sec.120-B of the Indian Penal Code. It is alleged in the said cases that in conspiracy with accomplice the petitioner has been involved in making false valuable securities like stamp papers, Indira Vikas Patra etc. and circulating the same. Over and above the abovestated material of two criminal cases which were pending investigation, two witnesses on assurance of their anonymity have supplied information about the antisocial activity of the petitioner.

3. That in consideration of the said material, the respondent no.1 has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of PASA. That resort to general provisions of law being insufficient to prevent the petitioner from continuing his antisocial activity, the impugned order has been passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended at the bar on behalf of the petitioner that the detaining authority while passing the impugned order has failed to consider the less drastic remedy of opposing and cancellation of bail which discloses the non application of mind of the detaining authority and as such the subjective satisfaction having been vitiated the order is invalid.

5. On scrutiny of papers, it appears that in paragraph 8 of the grounds of detention, the detaining authority has observed that though the petitioner is in judicial custody, in all probability, he might apply for bail and at any time he is likely to be released on bail and after getting himself released on bail the petitioner is likely to continue his antisocial activity and as such, it is necessary to pass the impugned order.

6. That in the matter of ZUBEDABIBI RASIDKHAN PATHAN VS. STATE OF GUJARAT & ORS. 1995(2) G.L.R. 1134, the Division Bench of this Court has expressed the view that

non consideration of less drastic remedy available under Section 437(5) of the Cr.P.C. claiming cancellation of bail amounts to non application of mind which vitiates the subjective satisfaction thus rendering the detention order bad in law. That the said view has been approved and endorsed in the proceeding of Letters Patent Appeal no.1056/99 decided on 15-9-1999 by this Court (Coram: C.K.Thakkar & A.L.Dave,JJ.).

7. In the instant case also, the detaining authority having failed to consider the aspect of less drastic remedy of opposing and cancellation of bail discloses the non application of mind on the part of the detaining authority which has vitiated the subjective satisfaction rendering the impugned order invalid.

8. As the petition succeeds on the above stated ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

9. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 10-1-1999 passed by the respondent no.1-Police Commissioner, Rajkot City against the petitioner is hereby quashed and set aside. The petitioner-detenu-Anil alias Abdul Jaykishandas Mistri is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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